

## QUESTIONS AND ANSWERS ABOUT THE REAL ESTATE RECOVERY TRUST ACCOUNT

**NOTE:** This information is provided as a public service. The information is general in nature and may not be applicable to a given claim. Each claim is separately evaluated. Please consult your own attorney for specific advice regarding your claim. The TREC Office of General Counsel cannot represent you in filing a claim against the Real Estate Recovery Trust Account.

1. Q: What is the Real Estate Recovery Trust Account?  
A: TREC collects fees from its licensees and maintains the money in the Real Estate Recovery Trust Account. The Trust Account is used to pay final judgments against persons **who were licensed as real estate brokers or salespersons** at the time the real estate transaction occurred.
2. Q: Must I hire an attorney to handle my claim?  
A: No. However, the Trust Account will pay reasonable attorney fees if a claim is paid. Most claimants employ an attorney to file the claim, obtain legal documents required for a payment, and represent the claimant if a court hearing is necessary.
3. Q: How does a consumer obtain a payment from the Real Estate Recovery Trust Account?  
A: The consumer files a sworn application with the court after the judgment has become final, a writ of execution has been returned *nulla bona*, and an abstract of the judgment has been filed with the county clerk.
- 4.. Q: Where do I get a sworn application?  
A: A sample of a sworn application is available from the TREC Office of General Counsel and from the TREC web site at:  
<http://www.trec.state.tx.us/>  
**The model will need to be modified to fit the facts of each claim.**
5. Q: What is a writ of execution?  
A: A writ is an order from the court to any sheriff or constable to attempt to find property of the defendant which may be sold to satisfy the judgment. The clerk of the court that issued the judgment can assist in having a writ issued. For a payment to be made from the Trust Account, the law requires the writ to be returned *nulla bona*, meaning there is no property to be sold. The officer serving the writ will complete it before returning it to the court.
6. Q: What is an abstract of judgment?  
A: An abstract of judgment is a document prepared by the clerk of the court that issued the judgment. It summarizes the amount of damages, attorney fees and costs awarded by the court, as well as any amounts paid or recovered on the judgment. The abstract must be filed of record with the county clerk.
7. Q: What is the most I can be paid?  
A: The maximum payment is \$50,000 for a single transaction and \$100,000 for all claims against a single licensee.
8. Q: Are attorney fees included in the limits given above?  
A: Yes. The total of actual damages, interest, court costs, and attorney fees paid from

the Trust Account cannot exceed these limits.

9. Q: Can any judgment against a licensee be paid from the Trust Account?  
A: No, only those judgments based on conduct in violation of The Real Estate License Act, Chapter 1101, Texas Occupations Code, (TRELA).
10. Q: What kind of conduct is in violation of TRELA?  
A: If the licensee is acting as a buyer, seller, landlord, or tenant, the conduct must involve misrepresentation, fraud, or dishonesty. If the licensee is acting as broker or agent, the conduct could involve misrepresentation, fraud, negligence, incompetence, or other conduct prohibited by TRELA.
11. Q: How would it be determined that the conduct was in violation of TRELA?  
A: The petition in the suit and the judgment awarded by the court must indicate the nature of the licensee's conduct. A claim would be unlikely to be paid if the claimant first asserts conduct that would violate TRELA only after the judgment is obtained.
12. Q: What kind of conduct is not in violation of TRELA?  
A: Generally, breach of contract, such as a failure to pay a real estate commission or note, failure to pay rent, or failure to comply with a settlement agreement, or other contractual matter.
13. Q: What are the procedures for payment of a claim?  
A: The procedures are set out in Subchapter M, Chapter 1101, Texas Occupations Code, which is available from the Office of General Counsel and from the TREC web site. Briefly, the procedures are these:
- File a sworn application with the trial court.
  - Notify TREC and the defendant that the application has been filed.
  - Send the TREC Office of General Counsel a copy of the application, the notice to the defendant, the petition, the judgment, the writ of execution with the officer's return *nulla bona* and the recorded abstract of judgment.
  - **DO NOT SET THE CLAIM FOR A HEARING BEFORE THE COURT UNTIL THE TREC OFFICE OF GENERAL COUNSEL ADVISES YOU THAT A HEARING WILL BE NECESSARY.**
14. Q: What happens once TREC is notified of the claim?  
A: The Office of General Counsel will review the documents and may request additional information. If all statutory requirements for payment appear to have been satisfied, the claim will be submitted to the members of the commission for consideration. The members of the commission may authorize a payment without contest, or instruct the staff to oppose the claim. If the claim is paid without contest, the Office of General Counsel will prepare an assignment of the judgment and an order for the court to enter, directing payment out of the Trust Account. The claimant or the claimant's attorney will be responsible for presenting the order to the court and returning a copy of the signed order and the original assignment of judgment to the Office of General Counsel.

15. Q: Can the defendant object to the claim?  
A: Yes. The defendant can demand a hearing before the court considering the application and can attempt to show that the claimant has not satisfied the statutory requirements for payment, or that payment should not be made for other reasons.
16. Q: What if the defendant files a bankruptcy proceeding?  
A: For a transaction prior to September 1, 2001, the claimant must show that the judgment is not subject to a stay or discharge in bankruptcy. If a bankruptcy proceeding is filed by the defendant, the claimant must obtain an order from the bankruptcy court that the judgment is non-dischargeable. Provided the limit on the claim has not already been exceeded (see Question 8 above), additional attorney fees may be paid from the Trust Account for the expenses incurred in keeping the judgment from being discharged. For a transaction on September 1, 2001, or later, the defendant's bankruptcy does not affect a claim.
17. Q: How long does it take to receive a payment from the Trust Account?  
A: If TREC does not contest your claim and the defendant is not demanding a hearing, claims are ordinarily paid within two weeks after the court enters the order directing TREC to pay. Because the commission does not meet every month, however, it may be several weeks after the claim is filed before the Office of General Counsel may obtain authority to pay a claim without contest.

**FOR FURTHER INFORMATION, CONTACT THE TREC OFFICE OF GENERAL COUNSEL,  
P.O. BOX 12188, AUSTIN, TX 78711-2188 OR (512) 465-3900.**